

**TWENTY-THIRD LEGISLATIVE DAY
TUESDAY, FEBRUARY 1, 2005**

House of Representatives

The House convened at 11 a.m., the Speaker in the Chair.

Roll call showed 69 members present.
Absent and excused -- Eskridge. Total -- 1.
Total -- 70.

Prayer was offered by Representative Denney.

The Pledge of Allegiance was led by Sarah Dexter, Page.

Approval of Journal

February 1, 2005

Mr. Speaker:

We, your COMMITTEE ON JUDICIARY, RULES, AND ADMINISTRATION, report that we have read and approved the House Journal of the Twenty-second Legislative Day and recommend that same be adopted as corrected.

FIELD(18), Chairman

Mrs. Field(18) moved that the report be adopted. Seconded by Mrs. Boe. Report adopted.

**Consideration of Messages from the
Governor and the Senate**

January 31, 2005

Mr. Speaker:

I transmit herewith enrolled **S 1024** and **S 1025** for the signature of the Speaker.

WOOD, Secretary

The Speaker announced he was about to sign enrolled **S 1024** and **S 1025** and, when so signed, ordered them returned to the Senate.

Report of Standing Committees

February 1, 2005

Mr. Speaker:

We, your COMMITTEE ON JUDICIARY, RULES, AND ADMINISTRATION, report that we have enrolled **H 6**, **H 7**, and **H 8**.

FIELD(18), Chairman

The Speaker announced he was about to sign enrolled **H 6**, **H 7**, and **H 8**, and, when so signed, ordered them transmitted to the Senate for the signature of the President.

February 1, 2005

Mr. Speaker:

We, your COMMITTEE ON JUDICIARY, RULES, AND ADMINISTRATION, report that we have transmitted enrolled **H 5** to the Governor at 11:45 a.m., as of this date,

January 31, 2005.

FIELD(18), Chairman

January 31, 2005

Mr. Speaker:

We, your COMMITTEE ON REVENUE AND TAXATION, report that we have had under consideration **H 11**, **H 14**, and **H 25** and recommend that they do pass.

CROW, Chairman

H 11, **H 14**, and **H 25** were filed for second reading.

January 31, 2005

Mr. Speaker:

We, your COMMITTEE ON RESOURCES AND CONSERVATION, report that we have had under consideration **H 21** and recommend that it do pass.

STEVENSON, Chairman

H 21 was filed for second reading.

There being no objection, the House advanced to the Seventh Order of Business.

Motions, Memorials, and Resolutions

**HOUSE JOINT MEMORIAL NO. 1
BY RESOURCES AND CONSERVATION COMMITTEE
A JOINT MEMORIAL**

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATIONS REPRESENTING THE STATES OF IDAHO, UTAH AND WYOMING IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the First Regular Session of the Fifty-eighth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, the ongoing drought in the state of Idaho has had a profound impact throughout the state, including the area of southeastern Idaho known as the Bear River Basin. Although inadequate, during times of high water such as spring runoff, Bear Lake is the major reservoir for containing flood waters of the Bear River within the Bear River Basin. The effects of drought in the Bear River Basin would be significantly reduced in the event alternative storage sites were available; and

WHEREAS, the Bear River Basin encompasses 7,400 square miles with 2,700 square miles in the state of Idaho. Originating in Utah's Uintah Mountains, the Bear River crosses state boundaries five times, has tributaries in Idaho, Utah and Wyoming, and ultimately discharges into the Great Salt Lake; and

WHEREAS, the Bear River did not naturally divert into Bear Lake. The Utah Sugar Company and the Telluride Power Company first proposed diversion of the Bear River into Bear Lake for water storage in 1898. That project was taken over by Utah Power and Light Company for the purpose of producing hydropower. The project, which included a diversion dam on the

Bear River, a canal, and a pumping station was completed in 1918; and

WHEREAS, a multistate compact between the states of Idaho, Utah and Wyoming, known as the Bear River Compact, was entered into in 1958 and amended in 1980. The Compact governs the operation of the Bear River and, for management purposes, the Compact divides the river into three segments. The three segments are known as the Upper Division, located in Utah and Wyoming, the Central Division, located in Wyoming and Idaho, and the Lower Division, located in Idaho and Utah. The Bear River Commission, made up of three members from each of the Compact states, a chairman appointed by the President of the United States, and an engineer/manager, manages the day-to-day operation of the river; and

WHEREAS, as a result of two lawsuits against Utah Power and Light Company during the 1970's, which claimed damage to crops due to flooding along the Bear River, the power company is under court order to keep the Bear River within its banks. Based on the court order, in the event the irrigation season ends with Bear Lake above 5,918 feet in elevation, water is released downstream to make room in Bear Lake for the spring runoff; and

WHEREAS, since the 1970's, millions of acre feet of water have been released to provide capacity for flood control. Releases carry the river as well as the surface water removed from Bear Lake downstream to the Great Salt Lake where the principal beneficiary is the Great Salt Lake ecosystem. The most recent releases were in 1997, 1998 and 1999; and

WHEREAS, lowering the elevation of Bear Lake in the Lower Division for flood control also impacts water users in the Upper and Central Divisions. Under the Compact, Woodruff Narrows Reservoir located in the Upper Division is not allowed to fill whenever the elevation of Bear Lake is below 5,911 feet above sea level, affecting both ground and surface water in that area. In addition, when Woodruff Narrows Reservoir is not full, no water is available for irrigation in a ten mile stretch of river in the Central Division leaving irrigators in that area without water for their crops; and

WHEREAS, dredging has been necessary to provide water for irrigation due to low lake levels; and

WHEREAS, studies to date have shown that use of Bear Lake for flood control has resulted in tons of suspended sediment solids to be deposited in the lake during the spring runoff. This is highly detrimental to the ecosystem. Increases in algae blooms on Bear Lake due to nitrates being carried in have been documented; and

WHEREAS, in the event the water had not been released in the interest of flood control, it is likely that Bear Lake would now be full or nearly full. In that event, it is probable that there would be no need to pump water out of Bear Lake for irrigation because there would be enough capacity to allow the water to flow out by gravity, there would be no need to dredge in Bear Lake in that the elevation of the lake would be high enough to make dredging unnecessary, and an elevation above 5,911 feet would allow upstream storage at the Woodruff Narrows Reservoir; and

WHEREAS, extremely low levels in Bear Lake could cause a water emergency to be declared by the state of Utah. The declaration would lead to closer scrutiny of the natural flow rights administered under the interstate accounting system. The

lack of adequate storage water to supplement natural flow could result in the curtailment of rights in Idaho; and

WHEREAS, if alternate storage sites were available, several hundred thousand acre feet of water would still be in Bear Lake to mitigate the effects of the drought. Pursuant to the Bear River Compact, Idaho is entitled to store approximately 125,000 acre feet of water annually and Utah about 390,000 acre feet annually. Provided adequate storage, this water, which is usually available during the spring runoff, could be stored to prevent any flooding of the Bear River. The water could then be used for irrigation, domestic and commercial development and recreation. A reservoir above Bear Lake would allow chemicals to be neutralized and suspended solids to settle out that are now entering Bear Lake. Alternative storage sites would provide for the conservation, preservation and best utilization of the water to which the state is entitled. This storage is desperately needed to allow residential, commercial and municipal development in the Bear River drainage without reducing irrigated agricultural lands; and

WHEREAS, flood control above Bear Lake would make possible a policy that Bear Lake would be the first to fill and the last to empty. This would provide more water for irrigation, minimize fluctuations of lake levels, improve spawning habitat for Bear Lake cutthroat trout, provide boat-launching capability at Idaho state parks, and allow the filling of Woodruff Narrows Reservoir. Flood control above Bear Lake would greatly benefit the economy of all three states in the Bear River drainage; and

WHEREAS, the United States Army Corps of Engineers is the federal agency responsible for flood control. The Corps has indicated a willingness to conduct a feasibility study of possible water storage sites upstream from Bear Lake which could be used for flood control of the Bear River. Costs of the study could range from \$600,000 to \$2,000,000 depending on the areas the study would include. The study will require an equal match of federal and nonfederal funds. However, with congressional approval, past local expenditures may be used as the local match; and

WHEREAS, past local expenditures that have been made include \$174,000 by the state of Wyoming for the Cokeville Reservoir project on Smith's Fork, \$350,000 by the state of Wyoming for the Bear River Plan and over \$2,000,000 of state funds from Idaho, Wyoming, and Utah through the Bear River Commission for stream gaging; and

WHEREAS, concerned citizens of the Bear River drainage, including the Bear Lake County Commission, the Bear Lake Regional Commission, Bear Lake Watch, Inc., and Love Bear Lake, Inc., are asking for Congressional approval to recognize past expenditures as the local match to make the Corps of Engineers feasibility study possible.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-eighth Idaho Legislature, the House of Representatives and the Senate concurring therein, that we respectfully urge the Congress of the United States and our Idaho delegation, as well as the Utah and Wyoming delegations in Congress, to support, work to pass and vote for legislation that will authorize and fund a feasibility study by the United States Corps of Engineers relating to the possibilities, benefits and costs of providing flood control above Bear Lake.

BE IT FURTHER RESOLVED that we urge Congress to

allow and approve past local expenditures, equivalent to fifty percent of the total cost of the study, as the required local match and that local expenditures to be allowed and approved include \$174,000 by the state of Wyoming for the Cokeville Reservoir project on Smith's Fork, \$350,000 by the state of Wyoming for the Bear River Plan and \$2,000,000 of state funds from Idaho, Wyoming, and Utah for stream gaging.

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegations representing the states of Idaho, Utah and Wyoming in the Congress of the United States.

**HOUSE JOINT MEMORIAL NO. 2
BY STATE AFFAIRS COMMITTEE**

A JOINT MEMORIAL

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES.

We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the First Regular Session of the Fifty-eighth Idaho Legislature, do hereby respectfully represent that:

WHEREAS, on October 15, 1990, Congress passed the Radiation Exposure Compensation Act (RECA), which provides for compassionate payments to persons or to their beneficiaries who developed diseases as a result of exposure to radiation from U.S. atmospheric nuclear weapons testing; and

WHEREAS, currently, a study is underway by the National Academy of Sciences and a report will be filed with Congress to address the adequacy of the initial geographic coverage provided in RECA; and

WHEREAS, compelling anecdotal evidence has been accumulated at public meetings and in written reports, to indicate the impact of atmospheric testing on the downwinder populations in Idaho; and

WHEREAS, preliminary evidence suggests that scientific documentation being gathered and assessed for inclusion in the report will find that risk factors present in Idaho equal or exceed the factors present in areas previously included in RECA coverage; and

WHEREAS, members of Idaho's congressional delegation have worked and will continue to press for responsible legislative action to address the claims of Idahoans based upon radiation exposure; and

WHEREAS, it is appropriate that members of the Idaho Legislature, speaking on behalf of the citizens of the state, express support for the efforts of Idaho's congressional delegation in their representation of downwinders in Idaho.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-eighth Idaho Legislature, the House of Representatives and the Senate concurring therein, that we anticipate the findings of the National Academy of

Sciences will verify the impact of testing on residents of Idaho, and we conclude that it is appropriate to compensate these downwinders in the same manner and to the same extent as those individuals previously compensated for similar exposures. We urge the members of Idaho's congressional delegation to continue in their endeavors on behalf of Idaho's citizens.

BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States.

HJM 1 and **HJM 2** were introduced, read the first time by title, and referred to the Judiciary, Rules, and Administration Committee for printing.

**Introduction, First Reading, and Reference
of Bills and Joint Resolutions**

**HOUSE BILL NO. 77
BY REVENUE AND TAXATION COMMITTEE**

AN ACT

RELATING TO INCOME TAX CREDITS FOR CHARITABLE CONTRIBUTIONS; AMENDING SECTION 63-3029A, IDAHO CODE, TO PROVIDE A STATE INCOME TAX CREDIT WITH SPECIFIED LIMITS FOR CHARITABLE CONTRIBUTIONS MADE BY A TAXPAYER TO THE SOUTHERN IDAHO LEARNING CENTER; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

**HOUSE BILL NO. 78
BY JUDICIARY, RULES, AND ADMINISTRATION
COMMITTEE**

AN ACT

RELATING TO CONSERVATORS; AMENDING SECTION 15-5-420, IDAHO CODE, TO PROVIDE FOR CONSERVATOR POWERS OVER TITLES TO PROPERTY OF A PROTECTED PERSON'S ESTATE.

**HOUSE BILL NO. 79
BY JUDICIARY, RULES, AND ADMINISTRATION
COMMITTEE**

AN ACT

RELATING TO GUARDIANS AD LITEM; AMENDING PART 3, CHAPTER 5, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-5-315, IDAHO CODE, TO SET FORTH THE DUTIES OF A GUARDIAN AD LITEM IN A GUARDIANSHIP CASE; AMENDING PART 3, CHAPTER 5, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-5-316, IDAHO CODE, TO SET FORTH THE RIGHTS AND POWERS OF A GUARDIAN AD LITEM IN A GUARDIANSHIP CASE; AMENDING PART 4, CHAPTER 5, TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-5-434, IDAHO CODE, TO SET FORTH THE DUTIES OF A GUARDIAN AD LITEM IN A CONSERVATORSHIP CASE; AND AMENDING PART 4, CHAPTER 5, TITLE 15, IDAHO CODE, BY THE ADDITION

OF A NEW SECTION 15-5-435, IDAHO CODE, TO SET FORTH THE RIGHTS AND POWERS OF A GUARDIAN AD LITEM IN A CONSERVATORSHIP CASE.

HOUSE BILL NO. 80
BY JUDICIARY, RULES, AND ADMINISTRATION
COMMITTEE
AN ACT

RELATING TO CONSERVATORS; AMENDING SECTION 15-5-419, IDAHO CODE, TO SET FORTH REQUIREMENTS FOR REPORTS SUBMITTED BY CONSERVATORS.

HOUSE BILL NO. 81
BY JUDICIARY, RULES, AND ADMINISTRATION
COMMITTEE
AN ACT

RELATING TO GUARDIANS AND CONSERVATORS; AMENDING SECTION 15-5-303, IDAHO CODE, TO SET FORTH REQUIREMENTS FOR PETITIONS FOR GUARDIANSHIPS; AND AMENDING SECTION 15-5-404, IDAHO CODE, TO SET FORTH REQUIREMENTS FOR PETITIONS FOR CONSERVATORSHIPS AND TO CORRECT A CODIFIER'S ERROR.

HOUSE BILL NO. 82
BY JUDICIARY, RULES, AND ADMINISTRATION
COMMITTEE
AN ACT

RELATING TO GUARDIANSHIPS; AMENDING SECTION 15-5-310, IDAHO CODE, TO PROVIDE THAT THE AUTHORITY OF AN EMERGENCY GUARDIAN SHALL NOT EXCEED NINETY DAYS UNLESS EXTENDED FOR GOOD CAUSE UPON APPLICATION OF THE TEMPORARY GUARDIAN; AND AMENDING SECTION 15-5-407A, IDAHO CODE, TO REMOVE LANGUAGE REQUIRING A REPORT FROM A MEDICAL DOCTOR OR A LICENSED PSYCHOLOGIST.

HOUSE BILL NO. 83
BY RESOURCES AND CONSERVATION COMMITTEE
AN ACT

RELATING TO POWERS OF THE PARK AND RECREATION BOARD; AMENDING SECTION 67-4223, IDAHO CODE, TO AUTHORIZE THE BOARD TO PROVIDE FOR A REDUCTION OF NO MORE THAN FIFTY PERCENT OF THE FEE CHARGED FOR RECREATIONAL VEHICLE CAMPING, EFFECTIVE SUNDAY NIGHT THROUGH THURSDAY NIGHT, FOR ANY SENIOR CITIZEN WHO POSSESSES A VALID FEDERAL "GOLDEN AGE PASSPORT" OR ITS EQUIVALENT SUCCESSOR, AS ISSUED BY A FEDERALLY-OPERATED FACILITY WHERE AN ENTRANCE FEE IS CHARGED AND TO MAKE TECHNICAL CHANGES.

HOUSE BILL NO. 84
BY STATE AFFAIRS COMMITTEE
AN ACT
RELATING TO HORSE RACING; AMENDING SECTION

54-2513, IDAHO CODE, TO PROVIDE FOR DISTRIBUTION OF CERTAIN GROSS DAILY RECEIPTS TO OWNERS AND BREEDERS OF RACING APPENDIX HORSES; AND DECLARING AN EMERGENCY.

HOUSE BILL NO. 85
BY STATE AFFAIRS COMMITTEE
AN ACT

RELATING TO REPORTS OF THE IDAHO STATE RACING COMMISSION; AMENDING SECTION 54-2505, IDAHO CODE, TO CLARIFY THE CONTENT OF THE REPORT TO BE FILED.

HOUSE BILL NO. 86
BY STATE AFFAIRS COMMITTEE
AN ACT

RELATING TO THE IDAHO MILLENNIUM FUND; AMENDING CHAPTER 18, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-1807, IDAHO CODE, TO REQUIRE APPROVAL BY A TWO-THIRDS MAJORITY OF THE HOUSE OF REPRESENTATIVES AND THE SENATE TO APPROPRIATE OR TRANSFER MONEY FROM THE IDAHO MILLENNIUM FUND

HOUSE BILL NO. 87
BY STATE AFFAIRS COMMITTEE
AN ACT

RELATING TO THE STATE HISTORICAL SOCIETY; AMENDING CHAPTER 41, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-4101, IDAHO CODE, TO PROVIDE LEGISLATIVE INTENT; AMENDING CHAPTER 41, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-4102, IDAHO CODE, TO PROVIDE CERTAIN REQUIREMENTS FOR STATE AGENCIES AND OTHER ENTITIES OF STATE GOVERNMENT PREPARING TO EXCAVATE OR PERFORM WORK ON PROPERTY OWNED OR CONTROLLED BY THE STATE, TO PROVIDE THAT THE STATE RESERVES TO ITSELF THE EXCLUSIVE RIGHT AND PRIVILEGE OF FIELD ARCHAEOLOGY ON SITES OWNED OR CONTROLLED BY THE STATE OR OTHER ENTITIES OF STATE GOVERNMENT AND TO PROVIDE FOR THE USE OF ALL INFORMATION AND OBJECTS DERIVING FROM SUCH FIELD ARCHAEOLOGY; AND AMENDING CHAPTER 41, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-4103, IDAHO CODE, TO PROVIDE FOR OPTIONAL PROJECT REVIEW BY THE STATE HISTORIC PRESERVATION OFFICE, TO PROVIDE CERTAIN REQUIREMENTS FOR STATE AGENCIES OR OTHER ENTITIES OF STATE GOVERNMENT PROPOSING A PROJECT THAT WILL TAKE PLACE ON STATE LANDS, OR THAT INVOLVES STATE-OWNED STRUCTURES AND/OR SITES, TO PROVIDE FOR RESPONSE TO PROJECT PROPOSALS BY THE STATE HISTORIC PRESERVATION OFFICE, TO PROVIDE THAT THE STATE AGENCY OR OTHER ENTITY OF STATE GOVERNMENT PROPOSING THE PROJECT SHALL HAVE THE DISCRETION TO ACT UPON THE RECOMMENDATIONS OF THE STATE HISTORIC

PRESERVATION OFFICE AND TO PROVIDE FOR THE USE OF RECOMMENDATIONS OF THE STATE HISTORIC PRESERVATION OFFICE.

ATTEST:

PAMM JUKER, Chief Clerk

H 77, H 78, H 79, H 80, H 81, H 82, H 83, H 84, H 85, H 86, and H 87 were introduced, read the first time by title, and referred to the Judiciary, Rules, and Administration Committee for printing.

There being no objection, the House advanced to the Tenth Order of Business.

Second Reading of Bills and Joint Resolutions

H 66, by Resources and Conservation Committee, was read the second time by title and filed for third reading.

Third Reading of Bills and Joint Resolutions

H 51 was read the third time at length, section by section, and placed before the House for final consideration.

At this time, the Speaker recognized Mr. Bedke to open debate.

The question being, "Shall **H 51** pass?"

Roll call resulted as follows:

AYES -- Anderson, Andrus, Barraclough, Barrett, Bastian, Bayer, Bedke, Bell, Bilbao, Black, Block, Boe, Bolz, Bradford, Cannon, Chadderdon, Clark, Collins, Deal, Denney, Edmunson, Ellsworth, Field(18), Field(23), Garrett, Hart, Harwood, Henbest, Henderson, Jaquet, Jones, Kemp, Lake, LeFavour, Loertscher, Martinez, Mathews, McGeachin, McKague, Miller, Mitchell, Moyle, Nielsen, Nonini, Pasley-Stuart, Pence, Raybould, Ring, Ringo, Roberts, Rusche, Rydalch, Saylor, Schaefer, Shepherd(2), Shepherd(8), Shirley, Skippen, Smith(30), Smith(24), Smylie, Snodgrass, Stevenson, Trail, Wills, Wood, Mr. Speaker. Total -- 67.

NAYS -- None.

Absent and excused -- Crow, Eskridge, Sali. Total -- 3.

Total -- 70.

Whereupon the Speaker declared **H 51** passed the House. Title was approved and the bill was ordered transmitted to the Senate.

There being no objection, the House advanced to the Sixteenth Order of Business.

Adjournment

Mr. Denney moved that the House adjourn until 11 a.m., Wednesday, February 2, 2005. Seconded by Ms. Jaquet. Motion carried.

Whereupon the Speaker declared the House adjourned at 11:25 a.m.

BRUCE NEWCOMB, Speaker